

INTEREST ARBITRATION PURSUANT TO SECTION 1111 OF THE SAN JOSE CITY CHARTER

History, Background and Guidelines

April 29, 2013

Interest Arbitration vs. Grievance Arbitration

- More common “Grievance Arbitration” requires Arbitrator to interpret existing contract terms agreed to by the parties
- “Interest Arbitration” requires Arbitration Board to decide the contract terms when the parties can’t reach agreement
 - Powers are legislative in nature
 - Authorized by voters in a City or County
 - Interest arbitration scope and appeal rights can be specified by city or county Charter

Meet and Confer Process

Generally:

- Parties Negotiate
- Impasse Procedures
 - Mediation
 - Fact Finding (AB 646)
- Adoption of agency's Last, Best and Final Offer

Interest Arbitration Limited To Public Safety Groups

- In California, interest arbitration is generally limited to police and fire bargaining groups
- Generally in larger cities
 - San Jose
 - San Francisco
 - Oakland
- Voters in cities have repealed interest arbitration based on economic concerns
 - Palo Alto
 - Stockton
 - Vallejo

San Jose's Residents Chose to Reform Arbitration

- In 2010, San Jose voters chose to reform interest arbitration instead
- Key reforms included:
 - Creation of clearer standards for the arbitration board, and the weight to be given to each
 - Creation of “caps”
 - Exclusion of certain items
 - Ability of either side to appeal

San Jose's Original Interest Arbitration

- San Jose voters adopted for police/fire in 1980
- Arbitration Board to consist of a “neutral” and one “party arbitrator” from each side
- Required to select from “last offer” selected by each party on each disputed issue
- Scope: all disputes pertaining to wages, hours, or terms and conditions of employment which remain unresolved after good faith negotiations

Prior Selection Criteria Were Very Broad and Undefined

“...most nearly conforms with those factors traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of public and private employment, including, but not limited to, changes in the average consumer price index for goods and services, the wages, hours, and other terms and conditions of employment of other employees performing similar services, and the financial condition of the City and its ability to meet the cost of the award.”

Voter Adoption Of Measure V in 2010

- 2009-10 Grand Jury Report Recommending the Interest Arbitration be Repealed
- Concerns About Economic Downturn and Loss of Services in San Jose
- Voters Approved Measure V in November, 2010, by a vote of 66.5% yes
- Next slides will outline changes to interest arbitration made by Measure V and now part of City Charter

Measure V Charter Provisions (Section 1111(d))

- If Board Chair is not selected within 10 days of impasse, then Superior Court appoints neutral arbitrator who shall be a retired Superior Court judge to serve as the Board Chair
- All arbitration hearings shall be open to the public and all documents submitted in arbitration shall be public records

Primary Compensation Factors (Section 1111(f))

- Primary factors in deciding compensation:
 - City's financial condition
 - City's ability to pay for employee compensation from on-going revenues without reducing City services
- A majority of Arbitration Board must find, based on a “fair and thorough review of the City's financial condition and a cost analysis of the parties' last offers, that the City can meet the cost of the award from on-going revenues without reducing City services.”

Primary Compensation Factors (cont'd)

- Arbitration Board shall “also consider and give substantial weight to the rate of increase or decrease of compensation” for other City bargaining units
- Compensation means *all* costs to the city, whether new or ongoing. Includes wages, premium pay, incentive pay, pension, retiree medical, employee medical and dental, other insurances, vacation, holidays and other paid time off.

The Welfare of the Public

- Unlike its predecessor, Section 1111, as amended by Measure V, requires that the panel's decisions are "in the best interest and promotes the welfare of the public."
 - This criterion, which exists in many other jurisdictions, recognizes the legislative nature of this process
 - In a time of tight municipal resources, spending more in one place means spending less in another
 - Public agencies, including the City, exist to provide services to its citizens
 - City believes substantial deference should be given to the priorities established by elected leaders

Limitations on Award Authority (Section 1111(g))

- Board of Arbitrators shall not issue a decision or award that:
 1. Increases the projected cost of compensation at a rate that exceeds the rate of increase in from sales tax, property tax, utility tax and telephone tax averaged over the prior five fiscal years
- This criterion is in addition to provision that requires a finding that the award will not require a reduction in services based on assessment of ongoing revenues

Limitations on Award Authority (Section 1111(g))

- An award is impermissible if it:
 2. Retroactively increases or decreases compensation, including pension and retiree health enhancements for prior service, but excluding base wages
 3. Creates a new or additional unfunded liability for the City
 4. Deprives or interferes with the discretion of the Police Chief to make managerial, operational or staffing decisions, rules, orders and policies in the interest of the effective and efficient provision of police services

Decision Process (Section 1111(i))

- Holding hearings
- After evidence, submission of last offer of settlement on each of the issues in dispute
- Arbitration Board meets to deliberate in closed session
- Arbitration Board decides each issue by majority vote

Decision Process (Section 1111(i))

- After making a decision, Arbitration Board mails a copy to parties but decision not publicly disclosed or binding until 10 days after provided to parties
- Parties can settle any of the issues during the 10-day period, or extend by mutual agreement
- At end of 10-day period, decision of the Arbitration Board becomes public and final

Arbitration Limits Enforceable By Writ of Mandate (Section 1111(h))

- Compliance with the requirements of Section 1111 by Arbitration Board is mandatory
- Failure to comply with Section 1111 provisions shall constitute an act in excess of jurisdiction
- Enforceable by Writ of Mandate under Code of Civil Procedure 1085

Next Steps

- City is willing and ready to engage in the mediation process with POA
- Continue negotiations with POA to reach an agreement that avoids interest arbitration
- If no agreement reached, proceed to interest arbitration on May 6, 7 and 8

Discussion/Questions